UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: JOHN DOE,

CV 98-1101

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United States Courthouse

Brooklyn, New York,

:

July 20, 2010
- - - - - - - - - - - - - - - - - X 10:30 o'clock a.m.

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MORGAN LEWIS & BOCKIUS, LLP
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Court Reporter: Henry R. Shapiro
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Proceedings recorded by mechanical stenography, transcript produced by computer.

THE CLERK: Criminal cause for oral arguments, '98 CR 1101, United States versus John Doe.

State your names for the record

MS. MOORE: Kelly Moore, Leslie Caldwell, Brian Herman and David Snider for John Doe

MS. LERNER: Richard Lerner of Wilson, Elser, Moskowitz, Edelman & Dicker for respondent Frederick M. Oberlander

MS. MOORE: Your Honor, with respect to the relief we seek, we rely on our brief, the arguments contained therein and the authority contained therein.

Specifically Judge Jones' decision in the Visa case and Judge Weinstein's decision in the Zyprexa case.

If anything, the facts of this case are more compelling than those cases. Visa and Zyprexa involved sealed documents in civil litigation, which involved possible commercial or economic harm to a business entity.

This case, as the Court is aware, involves potential physical harm or death to an individual. With respect to the First Amendment arguments, at the last court appearance the Court did not ask us to specifically address that in our briefs. We would like the opportunity to supplement our brief with more detailed First Amendment analysis if that is okay with the Court.

In the meantime, I would just note that the first amendment is not absolute. The facts of this case in no way support the conduct of the respondent and the respondent's First Amendment protection. The respondents are not the media, they are not a news gathering organization seeking to write articles and publish them

Mr. Oberlander is an attorney. As such, he has additional ethical obligations to not disseminate or use information that is secret, private and confidential, that comes into his possession.

Moreover, in this case, the documents at issue were clearly stolen and Mr. Oberlander, who represented the thief, knew that they were stolen.

As the agent of a thief, receiving those stolen documents, he doesn't deserve any greater protection-- First Amendment protection-- than the thief himself would.

Additionally, the respondent knew that some of the documents were sealed, as is clearly evident from paragraph 95 of the complaint in the Southern District.

As an attorney, once again, Mr. Oberlander knew what that meant. He knew that documents don't seal themselves, they are sealed only pursuant to court order. And there are also unsealed only pursuant to court order.

He was also aware of the Southern District electronic filing rules, which compelled him to exercise

caution and care with respect to disseminating information about cooperators. That rule applies to all cooperators, even those who testify publicly. In this case the cooperation and the cooperation agreement were sealed. Mr. Oberlander certainly should have exercised greater care.

The intended use of it in this case doesn't support compelling First Amendment interest. I don't know if the Court had the opportunity to review the Southern District Civil RICO complaint. But the information about my client's criminal case in no way supports any claims contained in that case, and it's clearly being used to harass, embarrass, intimidate and coerce my client.

Finally, as I mentioned before, this case unlike any of the cases cited by the respondents involving potential danger to human life. Under the facts of this case the First Amendment simply possess no bar to the imposition of the relief we're seeking.

With respect to Mr. Oberlander's declaration filed last Friday, I would note that the respondents throughout this proceeding have engaged in a number of dubious litigation tactics, that are arranged in an intentional misinterpretation of the Court's order, without seeking clarification along the lines of claiming that they didn't know. He contacted Mr. Bernstein for an affidavit that said they didn't know the lawyers could review the documents in

question in connection with representing the clients.

And a previous meritless allegation of misconduct against me. It was withdrawn, but nevertheless made and it was intended clearly to get me to do something that would have been unethical, to put my own interests ahead of my client's by accepting a settlement that wouldn't have been favorable to my client, just to get the unpleasant allegations against myself withdrawn.

The declaration of Mr. Oberlander, in which he accuses this Court of unconstitutional conduct and makes application for recusal, is clearly in the same vain of that litigation at that particular time. It is clearly intended to get the Court to do one of two things: To either recuse itself on the basis of a completely meritless application or in the alternatively to get the Court to pull its punches, to bend over backwards, to demonstrate a lack of bias, to issue a ruling that would be favorable to the respondents than if they had not made such a meritless unsupported application.

Those litigation tactics should be seen for what they are and respondents and litigants engaging in them should not be rewarded.

I thought long and hard about responding to some of the other allegations and arguments contained in this Oberlander declaration, the allegation that this Court has no decency, that somehow it is beyond the authority of a federal

judge, upon application of United States Attorney's office, to seal documents or files when doing so is in the interest of protecting human life or national security, or that somehow has a greater First Amendment right to put a man's life in danger by publishing stolen and sealed confidential documents then if he walked into a crowded theatre and shouted fire.

In rereading Mr. Oberlander's declaration, however, I was reminded of a comment that a former colleague of mine used to make from time to time, which is that there really is no percentage in arguing with crazy people, and so upon the advise of another wise man I once got, I think, I will let discretion be the greater part of valor and not dignify that declaration or the rants contained therein with a response.

If the Court has no additional questions for us, we will rest on our papers, but we would like to supplement them with an additional First amendment analysis.

THE COURT: I will come back to you.

Let me hear from Mr. Lerner.

MS. LERNER: Your Honor has now had an opportunity to read the case law --

THE COURT: Before we get to that, I am not altogether clear as to what Mr. Oberlander's notice of appeal is all about. I do not quite understand what is it.

MS. LERNER: It's a protective notice of appeal. He

reserve his right to argue. There is yet to be a formal permanent injunction or that a TRO -- there is possibly a gap period where it could be argued that the TRO lapsed and became a permanent injunction. It's merely protective.

THE COURT: What does that mean, a protective notice of appeal?

MS. LERNER: If the TRO could be deemed converted to a permanent injunction, we will appeal from that.

THE COURT: Is not that kind of premature? Is there anything that prevents him from filing a notice of appeal when that event occurs?

MS. LERNER: If a permanent injunction is issued we shall file a further notice of appeal.

THE COURT: What's the purpose of a protective notice of appeal? Is that to preserve some limitation period?

MS. LERNER: Frankly, your Honor, the case law --

THE COURT: To be perfectly candid --

MS. LERNER: Candidly the TRO itself is appealable because it restrains Mr. Oberlander's free speech rights.

THE COURT: Then he could file a notice of appeal with respect to what he believes is an order, which is properly appealable.

MS. LERNER: Yes.

THE COURT: I don't understand what a protective

notice of appeal is. I'm frank to say, I have never encountered it before.

It may be that my knowledge of this process is a little wanting, but I do not understand what it is.

MS. LERNER: First of all, on June 21st your Honor stated that there was a permanent injunction vis-a-vis the PSR and ordered it returned. That is appealable. The notice of appeal refers to that.

But since your Honor stated further evidence would be taken after it was stated that it's our position it could fairly be argued that the Court did not actually render a final determination as to that document. If it did --

THE COURT: The reason I am asking, Mr. Lerner, is that it is very clearly established law that it may be that a filing of a notice of appeal deprives this Court of jurisdiction with respect to continuing in a matter.

I do not know whether a notice of appeal, if filed, would have that effect here with respect to injunctive relief. I think that is something that is questionable.

But, in any event, it was that issue which caused me to wonder what is this document about, is it in some way affecting my continuing exercise of jurisdiction in this matter?

MS. LERNER: As we stated in the notice of appeal itself, we reserve all of our rights.

THE COURT: Neither here nor there.

Go ahead.

MS. LERNER: Your Honor has read the case law, I presume, that was cited in our papers and would perhaps now agree that the arguments that we have been making are not specious, which is the word that your Honor used at the first hearing. Perhaps your Honor having now read Bartnicki will agree that the analogy to a misdirected check is inapt.

In Bartnicki the Court stated quite clearly that while the interceptor of the phone call maybe guilty of a crime, it by know means follows from that that punishing disclosures lawfully obtained and in the public interest by one not involved in the initial illegality is an acceptable means of serving those ends.

You cannot punish someone who merely receives allegedly stolen information. It would be quite remarkable if the United States Supreme Court continued to hold speech by a law-abiding possessor of information can be suppressed in order to deter conduct of a non-law-abiding third-party, thus if Mr. Bernstein broke the law, you cannot punish Mr. Oberlander for that.

Mr. Oberlander has independent free speak rights. Your Honor, sealing the court file, I submit, was unconstitutional in this case, because there is no signed court order.

Hartford says there must be a court order. If your Honor did sign an order, there is nothing in the docket sheet, as far as we can tell, to indicate that prior notice appearing was given prior to the sealing of the court file.

We have not had an opportunity to see that docket sheet, therefore, we cannot note whether this case was properly sealed. If notice was given --

THE COURT: Excuse me.

If you went to the docket you would find that this case is under seal, correct?

MS. LERNER: Yes.

THE COURT: And in order to obtain documents, which are part and parcel of that case, you would have to make an application to a court to unseal that file. That is what the sealing order says.

MS. LERNER: And if the sealing order was not signed by your Honor and the requisite findings were not made, is unconstitutional, and we have been deprived of the opportunity to see the docket sheet and the United States Supreme Court in Amidao held we cannot presume what is in the docket sheet if we can't see it. If notice was given, we can't know that because the Court has declined to allow us to see the docket sheet as stated in Hartford. We cannot make any presumption about what it says. The appellate court can make no presumption and we cannot. Therefore, we cannot

presume the documents were properly sealed, your Honor.

There was nothing on the record that the sealing --

THE COURT: Excuse me. Just a minute. Is there some presumption that an order -- assuming that there is an order and you do not know whether the order was or was not signed -- what you do know by looking at the docket sheet is that this is a sealed file, sealed by order of the court.

Is there some presumption that the order is invalid because it was not signed, is that what I'm hearing?

MS. LERNER: I'm referring to the Hartford case--.

THE COURT: Mr. Lerner, I am asking you what I am understanding, is there is a presumption of the invalidity of an order?

MS. LERNER: I think, your Honor stated on the record that this is just matter of factly and indicated as I recall it wasn't even signed, it's docket said is sealed. If there is a signed order, let us see it, because without a signed order this proceeding is unconstitutional.

THE COURT: It may be, Mr. Lerner, that you are correct. You are not answering the question.

MS. LERNER: I don't have to make any presumption. The United States Supreme Court has held the appellate courts do not have to presume there is a signed order in the file when there is--.

THE COURT: If there is an order or docket entry

that says this has been sealed by order of the court, any person is free to ignore that order and if by some chance, some document in that file becomes available to any person, that person is free to assume that the order has no efficacy?

MS. LERNER: First of all, the docket here is sealed, therefore, Mr. Oberlander could not see any order in the file and the answer to your question is, yes, anybody may do it, whatever he wants with that document. It is free to be distributed, if it's a public of interest, criminal proceeding are per se of public interest.

THE COURT: It's true that criminal proceeding are a matter of public interest.

Doesn't follow that every document that has been created in the course of a criminal proceeding is a matter of public interest available to the public upon request.

That is particularly true, as I'm sure you know -- Mr. Lerner --

MS. LERNER: I apologize for that interruption.

THE COURT: I understand your passion in connection with this matter.

Let us talk one at a time. Okay.

I take it you read Charmer Industries.

MS. LERNER: Yes.

THE COURT: And I take it that having read Charmer Industries, you would agree that a presentence report is a

document which has some very specific confidentiality concerns.

MS. LERNER: Your Honor, of course, I agree with that. But the premise, you have asked whether a document could be used for any purpose -- if it's from a criminal trial -- criminal proceeding even if it's sealed, the question is was it stolen from the court file. Was it stolen or inappropriately unauthorized taken from the Court file as in Charmer?

The answer is, the Court can order its return. If it's obtained from other means, your Honor, has no jurisdiction to stop it. You can not issue a prior restraint order.

If I may continue?

THE COURT: Please.

MS. LERNER: There is nothing in the record, that we are aware of, because we cannot see the docket sheet or the sealing order. There is nothing on the order finding a more fundamental interest in the First Amendment would be served by sealing this court file. There is nothing on the record finding this was the least restrictive alternative.

Your Honor, granting -- now we turn to the TRO itself, as the Court granted a TRO, which constitutes a prior restraint on speech without conducting any inquiry as to whether the respondent's First Amendment rights would be

infringed.

Now, your Honor, ordered -- the order itself signed by your Honor incorporates Ms. Moore's arguments and it says for the reasons stated, but that is constitutionally insufficient according to Amadao, you must make independent findings to support a prior restraint.

It must be the order itself. The TRO is a nullity. Failing to make the requisite findings in the order to show cause, in as much it constitutes a prior restraint, renders that prior restraint unconstitutional.

Your Honor failed to disclose to us on the docket sheet that we requested, we cannot know whether these documents are properly sealed --

THE COURT: Have you made application to the Court?

MS. LERNER: We requested it.

THE COURT: Have you made application to me to unseal whatever document you wanted? That docket sheet indicated there were, I think, four or five numbered dockets -- docket entries which were sealed which were unsealed and, I think, made available to you.

MS. LERNER: They were not. They were not. Having a dual docket sheet, your Honor stated at the second appearance that there were thirteen items on the docket sheet and six were sealed.

Your Honor, that is improper.

THE COURT: What was improper?

MS. LERNER: Your Honor, you sealed the entire docket, yet you indicated there are thirteen items in the docket, six of which are sealed, which means there are others which are not sealed and yet the entire file has been sealed.

Your Honor, if the Court goes beyond the relief sought in the order to show cause there will be a further violation of Mr. Oberlander's constitutional rights for the order to show cause did not seek permanent injunction, did not seek a gag order, there is no basis for such leave. He cannot be gagged.

He returned, your honor, the original document that he obtained from Mr. Bernstein.

Now, it may not be so clear in the record that he -- those were actually the originals obtained from Mr. Bernstein. If the Court would like a representation from Mr. Oberlander to that effect, I would ask that he give it. But those were the originals.

Your Honor can do nothing to stop the dissemination of photocopies or electronic copies and the selective enforcement or selective gag order directed only at Mr. Oberlander and not, for example, Business Week, which as we noted in our papers, has on its website an article which states that it has a copy of the criminal -- the sealed criminal complaint in this matter.

Your Honor, cannot selectively enforce a gag order against Mr. Oberlander. You cannot gag him and not gag Business Week.

If you're going to take on a little guy you have to take on a big guy. He'll not sit here and accept that, neither will I. We will fight this to the end. A permanent injunction cannot be granted.

Thank you, your Honor.

THE COURT: Do you want to respond?

MS. MOORE: Yes, your Honor.

I would note we'd like to sort of supplement our brief with an additional Fifth Amendment analysis.

THE COURT: Your application is granted to file a supplemental brief.

There are a number of things, which are troublesome in this case. Going back to the original order to show cause, that document was troublesome because it just said that there was a significant breach in the processes of this Court with respect to criminal dockets.

There was, as I think, indicated on that occasion, I was very concerned about the integrity of the record of this Court and that file. It turns out that the first document on that docket sheet is a notification by an assistant United States attorney of the filing of an information, which eventually evolved into an indictment.

There is no indication, that is docket number one, which I obtained or had the clerk obtain from Kansas City or wherever these files are shipped, because it was no longer available in the courthouse. There is not any indication in that document or in a subsequent document that an application was made or request was made in that document to seal that file. Nor have I been able to find any order signed by me, which directed that this file be sealed.

Criminal cases such as the John Doe case and cases in which by virtue of cooperation agreements and variety of other matters either national interest, security interest, or significant interest that one may have in his own safety, which may be at risk. Criminal files are sealed where that is a significant consideration.

Let us assume for the moment that an order was signed by me somewhere along the line, as it may have been, directing that the file in this case be sealed. That order is directed to whom? Who is bound by it? That order, it would appear, is directed to the clerk of the court who is informed that this document or this file is sealed and is not to be made available, except upon an order of the Court unsealing it.

When the order to show cause was first brought into this Court, it was a very serious concern as to whether somebody in this courthouse unsealed that file or made

document which were sealed available to third parties. That was a very significant concern.

A hearing, which we held some weeks ago, makes it plain and, I think, it is beyond dispute that these documents were not removed by John Doe, he properly had them. The cooperation agreement was a document which was in the possession of his then attorney. His attorney had a perfect right, as did John Doe, to have a copy of that cooperation agreement, had a perfect right to have whatever document pertained to his case, which may have been part of the file.

Assume that John Doe decided to make the cooperation agreement, the proffer agreement available to a third-party, would an order have been violated? The answer is clearly, no. John Doe had these documents, so the testimony has thus far revealed, Mr. Bernstein has not submitted an affidavit nor has he testified. You cannot find him for the purpose of serving the subpoena.

What we have on the record is the testimony by John Doe that he did not give those documents to Mr. Bernstein, which gives rise to the legitimate inference that Mr. Bernstein may have stolen them, may have improperly obtained those documents.

What order of the Court was violated by that event? Those documents then came into the hands of Mr. Oberlander. Mr. Oberlander knew that those documents were sealed

documents, contained very, very serious information and his assertion or testimony that, well, it wasn't his words, it was his client's words, is remarkable for it's disingenuous. To say that I am not a criminal lawyer and I don't know what it meant, I have a sealed document, is preposterous. Particularly, since he had the electronic filing information from the Southern District that said if it's a cooperation agreement, be very, very careful before you use it.

Now, what happened, assuming that the documents were in John Doe's cabinet or in his desk, as they had a perfect right to be, they were his documents, and the documents were then wrongfully taken by Mr. Bernstein. Mr. Bernstein is a converter, Mr. Bernstein has no title to those documents, no legal right to those documents, to that tangible document whether it would be a piece of paper, whether it be a gold ring or whatever it is, it was a tangible item which was converted, given the testimony that I have by Mr. Bernstein --

MS. LERNER: John Doe, I believe. Bernstein did not testify.

THE COURT: I am saying based on the testimony. Mr. Bernstein then analogizing these events to the fundamental principle of conversion, or larceny, if you will, past it onto Mr. Oberlander.

Mr. Oberlander had no better right to those

documents than Mr. Bernstein had. If we were to describe this change of events in terms of property rights, title, Mr. Bernstein had no title and he had no title to give to Mr. Oberlander.

Mr. Oberlander even if he were an innocent purchaser for value, would not have acquired title to those documents, because Mr. Bernstein had no title to give him. If requests were made of Mr. Oberlander to return those documents and Mr. Oberlander refused, it may be that an action for conversion may be available against Mr. Oberlander.

It may be that there is some disciplinary rule, which might be applicable to Mr. Oberlander, who had documents which he knew or perhaps should have known may have been improperly obtained by Bernstein and passed onto him.

It may be that there is some ethical principle, which should have precluded Mr. Oberlander from using those documents. Because the sensitivity of those documents would have been apparent to any reasonable person, particularly one who is trained in the law ostensibly.

So the question is, yes, something bad was done, something very bad and perhaps despicable was done by the use of those documents annexed to a complaint in the Southern District, in a civil case, but the question is what order was violated?

You can certainty submit briefs on the First

Amendment issue. I have some question about whether the First Amendment is applicable here. There was an opinion by Judge Kahn in the Western District-- I did not bring my file down. I thought this was on for 11:30. What is the name of the town -- I will be more than happy to give it to you.

LAW CLERK: It was a Northern district case.

THE COURT: Yes, it was by Judge Kahn, in which he has a very interesting discussion in a case, which is not this, but analogous in the sense that it involved a confidentiality order that was part of a potential settlement stipulation and that the documents in that confidentiality agreement became available or was sought to be made available to a newspaper upstate by the reporter of that newspaper and the First Amendment argument was made in that case as well.

Judge Kahn didn't think it was applicable for a variety of reasons. I think, his reasoning might be quite persuasive when dealing with a presentence report and certainly Charmer, I think, leaves very little doubt that a presentence report has a very, very special status. So there we are.

You want an opportunity to submit the supplemental brief and I will give you that opportunity. I just received Mr. Lerner's document this morning. It was FAX'D or ECF'd at four something last night. You don't request an adjournment at 4:00 o'clock on the eve of a hearing. If you look at my

local rules it require 48 hours notice for purposes of adjourning a schedule hearing or a conference.

So I didn't get around to reading it because I left before that document arrived and I looked at it this morning.

Ms. Moore called, I think, shortly after that document was received, so my law clerk tells me, and asked for an adjournment to respond to that letter. I was not able to respond to that because I was not here. But I did call her this morning and I asked her if she wanted to adjourn. You indicated that you saw no purpose for this conference as well, but she preferred to go ahead and make application for a supplemental brief.

What I have just declared is not to be understood at this moment as a determination that injunctive relief may not be appropriate, but I am troubled by the issues as I have outlined them as to whether an order signed by a judge on one of those sealing envelopes, which says, not to be unsealed except by order of the Court, is binding upon any third-party person, is binding or is the procedure, which is intended by that procedure, which informs any third-party who has notice or will have notice by looking at a docket sheet, looking at the ECF, this is a case under seal -- under sealed or filed under seal-- make application to the Court to unseal the document.

Whether having knowledge that the case was one,

which has been filed under seal, whether an order was issued or not, it is a case which is filed under seal, and clearly indicates the content of that sealed file is not to be disclosed, except upon order of the Court, whether that can be ignored, whether that is presumptively meaningless and has no binding effect upon anybody.

It is an interesting question, Mr. Lerner. Judge Kennedy who I think you were quoting with all due respect, may not have faced this specific issue at any given time, but it is obviously an issue which is quite troublesome. It is quite troublesome in so far as Mr. Oberlander's use of that document, which he knew was sealed, knew contained very sensitive information. It may be some other relief may be available against Mr. Oberlander. I am not sure.

In so far as injunctions are concerned, there is an interesting observation in Charmer as well, if you read it carefully, Mr. Lerner, and I'm sure that you have. Normally was is required, and Ms. Moore indicates what is normally required before injunctive relief is obtained-- and by the way in so far as the TRO is concerned-- I do not recall there was any objection ever raised by you to the issuance of the TRO.

It is my sense that you were consenting to it at every stage of the TRO as it was initially issued and renewed. We will leave that go for the moment.

MS. LERNER: I can respond --

THE COURT: I said, leave that go for the moment. But normally, before a TRO-- injunctive relief, more specifically should be issued, there are three prerequisites. The leading case in this circuit is Jackson Dairy versus H.B. Hood, I think, it is 570 2d or there abouts. You have to show irreparable alarm, likelihood of irreparable harm, likelihood of success on the merits, or reasonable issues going to the merits with the balance of hardships tipping in favor of the movant.

In Charmer, you may recall-- it may be Judge Kearse who said that the burden should not be on the person seeking the injunctive relief, where the presentence report is the document at issue, the burden should be upon the Attorney General, the person who has that presentence report to establish an overriding need for the use or possession of that document.

The burden should be on the other side, not on the movant, but the person seeking to be enjoined.

Having said all of that I will await further briefing. I do not think there is anything further that you want to submit, Mr. Lerner.

MS. LERNER: There are two cases I would like to cite and just --

THE COURT: Why don't you submit them to me.

MS. LERNER: I don't have copies for --

THE COURT: When I say submit them, submit the citations to them.

MR. LERNER: DiPietro against the United States of America.

THE COURT: I'm sorry --

MS. LERNER: D I P I E T R O.

It is a Lexus cite, 2009, U.S. District --

THE COURT: What are the names of the parties?

MS. LERNER: DiPietro against the United States of America.

THE COURT: DiPietro is the plaintiff?

MS. LERNER: Petitioner for the unsealing of the Court file. 2009, US District, Lexus 30010.

THE COURT: What court was it.

MS. LERNER: Southern District.

And the second case is Nycomeds against Glen Parker Generics, 2110 U.S. district, Lexus 20788.

It is a magistrate decision , Eastern District of New York, Magistrate Mann.

THE COURT: You want a week?

MS. MOORE: Yes, your Honor.

THE COURT: You are responding to Mr. Lerner's last submission and I don't think any further submissions are necessary.

MS. MOORE: Your Honor, in light of Mr. Lerner's last submission, I would seek clarification with respect to the PSR that it's clear --

THE COURT: Before you get to that. Am I correct that the documents, at least Mr. Lerner's last submission says this whole proceeding now is moot because the documents have been surrendered, turned over to you, is that correct?

MS. MOORE: Not that I know of. I think, as I understand his position, which I don't agree with, he's entitled to keep all copies of the documents, as long as he returned the originals, so, I believe, in his letter he states that if at the court proceeding he marked as exhibits the original versions of those documents, but his client has maintained both electronic and hard copies, so clearly the intent was not to give back, as Judge Jones ordered in Visa, all copies as well. It doesn't get the originals back and are free to disseminating copies.

THE COURT: I think, I indicated Mr. Oberlander should not do that. I think it was in the form of an order and that order, I believe, if I have not done so, I am doing it now and if you want it in writing until I resolve this issue.

MR. LERNER: You are issuing a further TRO?

THE COURT: Yes, I am.

I'm issuing a further TRO for the reasons that I

have indicated.

I think there is irreparable harm, which is imminent to Mr. John Doe, those documents contained information which is highly, highly sensitive and if disseminated it is discriminatively to a person that should not get the information.

I think, it would put Mr. John Doe's safety at risk. The likelihood of success is or is not present. Again, if Charmer Industies is being read correctly by me and, I think, it is, I think, the burden with respect to whether or not there is some need to maintain those documents or to keep them should be shifted to you. Until next week, okay.

I do not think we need any further hearing. You will submit the briefs and I will make my determination. The TRO is continued for another ten days.

Is there anything further?

MS. MOORE: No, your Honor.

THE COURT: Thank you.

MS. MOORE: I do have one last application. With respect to the transcript to have my client's name replaced with John Doe.

THE COURT: Yes.

MS. MOORE: Thank you.

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